

1 AMELIA ANN ALBANO, CITY ATTORNEY
(SBN 103640)
2 CAROL A. HUMISTON, SR. ASST. CITY
ATTORNEY, (SBN 115592)
3 OFFICE OF CITY ATTORNEY
CITY OF BURBANK
4 275 East Olive Avenue
P. O. Box 6459
5 Burbank, CA 91510
Tel: (818) 238-5707 Fax: (818) 238-5724
6

7 LINDA MILLER SAVITT, SBN 94164
E-mail: LSavitt@brgslaw.com
8 BALLARD ROSENBERG GOLPER & SAVITT, LLP
500 North Brand Boulevard, 20th Floor
9 Glendale, CA 91203
Tel: (818) 508-3700, Fax: (818) 506-4827
10

11 RONALD F. FRANK (SBN 109076)
E-mail: rfrank@bwslaw.com
12 ROBERT J. TYSON (SBN 187311)
E-mail: rtyson@bwslaw.com
13 BURKE, WILLIAMS & SORESENSEN, LLP
444 S. Flower Street, 24th Floor
14 Los Angeles, CA 90071
Tel: 213-236-0600 Fax: 213-236-2700
15

16 Attorneys for Defendant City of Burbank
17

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 COUNTY OF LOS ANGELES

20 WILLIAM TAYLOR,

21 Plaintiff,

22 v.

23 CITY OF BURBANK and
24 DOES 1 through 100, inclusive,

25 Defendants.
26
27
28

Case No. BC 422252
Assigned to: Hon John L. Segal, Dept. 50

**DECLARATION OF RONALD F.
FRANK IN SUPPORT OF
DEFENDANT CITY OF BURBANK'S
MOTION FOR NEW TRIAL OR
ALTERNATIVE JNOV**

DATE: June 6, 2012
TIME: 8:30 a.m.
DEPT: 50

Trial Date: March 5, 2012
Action Filed: Sept. 22, 2009

CITY ATTORNEY
2012 MAY 10 AM 9:58

1 I, RONALD F. FRANK, declare:

2 1. I am an attorney at law duly licensed to practice before all of the Courts of the
3 State of California and am a partner at the law firm of Burke, Williams & Sorensen, LLP, counsel
4 of record for defendant CITY OF BURBANK ("City") in the above-referenced matter. I am the
5 lawyer at my firm with primary responsibility for the trial of this matter, and I was primarily
6 responsible for pre-trial percipient witness and expert discovery in this matter as well. I have
7 personal knowledge of the facts contained in this Declaration, and if called as a witness I could
8 and would testify competently to these facts under oath.

9 2. Together with Linda Miller Savitt of the Ballard Rosenberg Golper & Savitt, LLP
10 firm, I was trial counsel for the City in this matter. Among other things, my role as trial counsel
11 included the pre-trial preparation of a written request for the Court to ask prospective jurors about
12 certain topics in the *voir dire* process, to participate with Ms. Savitt in decisions on the exercise of
13 peremptory challenges and challenges for cause as to prospective jurors, and to give the defense
14 opening statement.

15 Voir Dire Issues

16 3. The evidence revealed during pre-trial depositions had shown that Plaintiff had
17 been the Deputy Police Chief at the Burbank Police Department ("BPD") for a period of nearly
18 two full years, and was a BPD Captain at the time of his termination. Pre-trial discovery also
19 revealed that most of the trial witnesses were former or current BPD officers, and that the City's
20 outside investigator (Mr. Gardiner) and the plaintiff's police practices expert (Dr. Kim) had been
21 high-ranking law enforcement officers before they retired. Police and law enforcement
22 personnel, procedures, policies, discipline, investigations, and other activities were thus a central
23 focus of the case. The City contended that it terminated Plaintiff for official misconduct
24 concerning a BPD internal affairs investigation, and the Plaintiff contended that his termination
25 was in retaliation for his reports of various things concerning the BPD during his employment.
26 Pre-trial discovery included the production of documents and interviews of BPD officers
27 concerning a BPD robbery investigation and uses of force, among other things.

1 4. For these and other reasons, the fact that a prospective juror had a prior negative
2 contact with a law enforcement official or agency, and the use of force or weapons, were all
3 material to me and my client in assessing potential bias to be ferreted out during *voir dire*.
4 Accordingly, before the Final Status Conference, I prepared and filed the City's February 27,
5 2012 Proposed Voir Dire Questions, a true and correct file-stamped copy of which is attached
6 hereto as Exhibit 1. The following topics quoted from that filing were designed to reveal actual
7 or implied bias against police agencies and officers:

8 "3. Have any of you had any contact or involvement, whether positive or negative, with
9 members of a law enforcement organization such as police, security, military, or otherwise?"

- 10 a. If you would prefer to talk about that contact in private, let me know and we can
11 discuss it separately from other jurors.
12 b. Is there anything about that experience that would make you more likely to favor
13 one side or the other in this case?

14 "4. Do any of you believe that in a court case, a law enforcement officer is more likely to be
15 truthful, or less likely to be truthful, because of his or her position?"

16 "5. Among other things, this trial involves allegations of the use of physical force by police
17 officers in the line of duty.

- 18 a. Have any of you had any experiences that involve the use of force by a police
19 officer against yourself, a family member, or a close friend or neighbor?
20 b. Have any of you (or to your knowledge a family member, close friend, or neighbor)
21 ever filed a citizen's complaint, claim or suit against a law enforcement agency
22 concerning the use of force against you or them?"

23 5. I included the suggestion that the Court give prospective jurors the option of
24 talking about negative contacts with the police in private, as per item 3a above, to encourage
25 honesty. In my experience, few jurors relish sharing their arrest or criminal records with
26 strangers, and the option of a private sidebar gives them the ability to discuss potentially sensitive
27 matters separately from other jurors. During the *voir dire* at the instant trial, prospective juror
28 No. 14¹ availed himself of the private sidebar option for an issue relating to his indirect
involvement with law enforcement officers.

¹ In my Declaration and in the Memorandum of Points and Authorities and Request for Judicial Notice, I refer to all prospective jurors and trial jurors by their seat numbers, not by their names, in an effort to maintain and protect their privacy, particularly in light of the fact that references to two of them includes information regarding past arrests, criminal records giving rise to the evidence of juror misconduct as outlined in the Memorandum. Additionally, I am aware that the newspapers have been following the trial and the post-trial motions, and several jurors with whom I spoke advised me they did not want publicity. We are thus redacting the names and birthdates of the jurors revealed by my office's juror investigation post-trial. We will be providing un-

1 6. Plaintiff did not object to the City's written request to have the Court inquire about
2 actual or implied bias for or against police departments and officers. While the Court did not ask
3 about all of the City's requested *voir dire* topics, it did select the negative contact and use of force
4 topics as ones to inquire of prospective jurors. The Court asked prospective jurors about these
5 topics prior to attorney *voir dire*, and then again when replacement prospective jurors were seated
6 following excusals of several jurors for cause or upon exercises by both sides of peremptory
7 challenges. The negative contact questions are contained in the trial transcript at pp. 32-34, 39-
8 41, 99-100, and 102-03, and the use of force question and some answers to same are at pp. 40-41
9 and pp. 102-03 from the first day of trial on March 5, 2012. Attached to this Declaration as
10 Exhibit 2 are true and correct copies of the cover page and pages 11-13, 20-21, 25, 31-34, 36, 39-
11 41, 43-44, 49-52, 57, 73-74, 87, 91-92, 99-103, and 115 of the Reporter's Transcript of March 5,
12 2012 ("1 RT"), which are the pertinent excerpts regarding what transpired on *voir dire*.

13 7. Several jurors responded to the use of force and negative contact questions,
14 including prospective jurors No. 2, No. 3, No. 6, and No. 18. And as noted above, prospective
15 juror 14 took the Court up on its invitation to speak privately about a basis for potential bias
16 relating to a contact with a law enforcement officer. Accordingly, a number of prospective jurors
17 were forthcoming and responsive to the Court's *voir dire* questions about negative contacts with
18 law enforcement agencies and one specifically availed himself of the Court's offer to speak
19 privately if a truthful response might have been embarrassing or too personal. Neither of the two
20 jurors who are the subject of the juror misconduct issues raised in this Motion for New Trial or
21 JNOV responded to the negative contact question, nor did either avail themselves of the private
22 sidebar option. None of the jurors who did provide information regarding experiences with law
23 enforcement remained as seated trial jurors. Prospective juror 6 was dismissed for cause by the
24 Court [1 RT, 91:8-92:5]. Prospective juror 3 was the City's first peremptory challenge [id. at
25 92:19-21] because of her negative experience with the LAPD, the same agency with which Jurors
26 Nos. 6 and 7 had their prior negative experiences. Prospective jurors 1 and 18 were also excused

27
28 redacted exhibits to Mr. Smith under separate cover and I will bring un-redacted copies of those
exhibits to the hearing for the Court.

1 by peremptory challenge, but by Plaintiff before the defense decided to excuse them [1 RT,
2 92:10-13, 115:1-4].

3 8. In preparing the list of question and topics as I did, I desired to learn both of the
4 existence of a past negative contact with law enforcement, and whether prospective jurors
5 believed it would bias them. Securing both of these types of answers would enable me and Ms.
6 Savitt to assess both the potential for a challenge for cause and the possible use of a peremptory
7 challenge. In my experience, some people attach negative associations to police or law
8 enforcement agencies in general merely because those people were caught or accused by a police
9 officer of doing something wrong. An arrest or even a citation can be a salient event impacting a
10 person's self-image, and depending on the nature of the charge and criminal case outcome, the
11 event can lead to a variety of negative consequences. Implied biases such as those arising from
12 the consequences of an arrest or conviction are things I look for in a case with law enforcement
13 witnesses in a prospective juror's answers to follow-up questions, as well as looking for their
14 demeanor, tone of voice, and body language during responses to such questions in *voir dire*.

15 9. I have read jury research studies indicating that a significant percentage of jurors
16 never change from the initial impression they have to favor or disfavor a side in a trial. The most
17 recent of these research studies that I read was published in the March 2012 DRI publication
18 entitled *For the Defense*. A true and correct copy of that publication's cover page and the article
19 are attached to this Declaration as Exhibit 3. Identifying prospective jurors who might tend to
20 have an initial impression in favor of an adverse party is thus part of my goal during jury
21 selection. That goal is inhibited if a juror does not reveal information about himself or herself
22 during jury selection that might tend to bias him or her against my client. Judges (including the
23 Court in this case) often seek to learn from a prospective juror during *voir dire* whether they
24 "could wait until you hear all the evidence from both the plaintiff and defendant before making
25 up your mind" for similar reasons, and CACI 100 which the Court gave in this case admonishes
26 jurors: "It is important that you keep an open mind throughout this trial." [1 RT, 119]. Ms. Savitt
27 echoed the "keeping an open mind" theme in her *voir dire* questioning. [1 RT, 86; 1 RT, 107; 1
28

1 RT, 113]. True and correct copies of the RT pages from the March 5, 2012 first day of trial
2 referenced in this Declaration are collectively attached to this Declaration as Exhibit 2.

3 The Refusal to Instruct on CACI 2405

4 10. During my Opening Statement on March 5, 2012, I foreshadowed the issues that I
5 believed would be addressed at the end of the case that are addressed in CACI 2405. I devoted
6 considerable time in Opening Statement to the concepts of good cause, the reasonableness of the
7 Gardiner investigation, the good faith reliance on that investigation by Chief LaChasse and
8 Deputy Chief Angel, and the reasonable grounds for LaChasse and Angel's belief that Taylor had
9 committed misconduct. These are the concepts embraced by CACI 2405. In the trial transcript,
10 my Opening Statement begins at page 153 [1 RT 153]. At page 155 [1 RT 155], I first mentioned
11 to the jury that the evidence would show that Plaintiff was terminated "as a result of" Gardiner's
12 investigations. At page 159 [1 RT 159], I first mentioned the evidence would reveal grounds for
13 LaChasse and Angel's "reasonable belief that Mr. Taylor had engaged in misconduct." At page
14 175 [1 RT 175], I advised the jury that "We think the evidence will show that the City had good
15 cause for the termination. . . ." At page 176 [1 RT 176], I used the term "outside neutral
16 assessment" to describe Gardiner's work for the City, and that the evidence would show "the
17 termination was for good cause, [and] that Scott LaChasse . . . [had] reasonable grounds for his
18 belief of that misconduct" True and correct copies of these pages are attached hereto within
19 Exhibit 2. All of these concepts are ones I took from the *Cotran v. Rollins Hudig Hall*
20 *International, Inc.* (1998) 17 Cal. 4th 93 case, a case I had first cited to the Court on page 9 of the
21 City's Voluntary Settlement Conference brief lodged last November shortly after this Court took
22 the mantle of Department 50 from Judge Wiley. According to the authorities or notes of
23 decisions section of the CACI book, instruction 2405 was based on the *Cotran* decision.

24 11. After the trial day on March 14, 2012, while preparing an outline for Ms. Savitt to
25 use in her closing argument, I discovered that CACI 2405 had been inadvertently or mistakenly
26 omitted from the defense list of proposed jury instructions. Upon discovering this omission, I
27 asked Mr. Tyson of my office to prepare a proposed instruction that was verbatim from CACI but
28 which only changed the names of the parties to be consistent with the other CACI instructions in

1 this case, and asked him to email the text of the proposed instruction to both of Plaintiff's trial
2 counsel. I reviewed Mr. Tyson's e-mail to Messrs. Smith and Brizzolara and to Mr. Smith's
3 paralegal, which was dated 7:41 pm that evening. Attached hereto as Exhibit 4 is a true and
4 correct copy of that e-mail and its attachment. The next morning, Thursday March 15, 2012, I
5 told Mr. Smith about the instruction, gave him a copy, and gave him a copy of both of the cases
6 cited in the defense instruction, i.e, the *Cotran* decision and the more recent *Nazir* decision which
7 per the authorities section of the City's proposed instruction applied *Cotran* to a retaliation case.
8 I also provided copies of both case decisions to the Court, along with the text of the proposed
9 instruction. Attached hereto as Exhibit 5 is a true and correct file-stamped copy of the City's
10 March 15, 2012 submission of proposed CACI 2405. Mr. Brizzolara arrived later that morning,
11 and announced on the record that he had 3 new instructions to submit to the Court, which he did.
12 One of those 3 new instructions was plaintiff's Special No. 18, which pertained to the issue of Lt.
13 Puglisi's reading of some trial transcripts. Attached hereto as Exhibits 6 and 7 respectively are
14 true and correct copies of plaintiff's Special Instruction No. 18 as originally submitted, and the
15 modified version given to the jury.

16 Giving of Plaintiff's Special Instruction 18 re Reading of Trial Testimony

17 12. During the trial the defense ordered daily transcripts of the trial testimony. This
18 was no secret to the plaintiff's counsel, as court reporter David Salyer asked plaintiff's counsel if
19 they desired a daily as well, and Mr. Salyer handed the dailies he prepared to the defense counsel
20 (or defense paralegal) in the courtroom in plain view of plaintiff's counsel. At no time did
21 plaintiff's counsel or the Court suggest that there was anything improper about the defense
22 receiving dailies in order to help prepare the defense, and obviously to help prepare upcoming
23 witnesses to testify. Nor did the plaintiff request any order restricting the ability of trial counsel
24 to assist upcoming witnesses in preparing to testify. Although plaintiff requested an order
25 excluding witnesses from the courtroom, he did not request any order barring trial counsel from
26 discussing a prior witness' testimony with any upcoming witnesses, nor barring defense counsel
27 from paraphrasing, reading or showing the daily testimony to a subsequent witness.

1 13. Lt. Puglisi did not violate the Court's witness exclusion order. He was never
2 present in the courtroom while another witness was testifying in this trial. The Court did not
3 issue an order barring counsel from speaking to future trial witnesses about the testimony of other
4 trial witnesses. The Court did not issue an order barring counsel from paraphrasing or reading the
5 trial testimony of witnesses who had already testified to those who had not yet testified. Nor did
6 the Court order bar defense counsel from showing the dailies to upcoming witnesses.

7 14. When Lt. Puglisi was asked on cross-examination whether he had read any
8 documents to help him prepare to testify, he was forthcoming and told Mr. Smith that he had read
9 some trial testimony. Mr. Smith did not specifically ask Lt. Puglisi if he had reviewed
10 depositions or other testimony of trial witnesses. It was clear that Lt. Puglisi did not believe he
11 had done any thing wrong. A lengthy sidebar ensued where Mr. Smith made a motion to strike
12 all of Lt. Puglisi's testimony. The argument during this sidebar is transcribed in the Reporter's
13 Transcript of trial day 8, March 14, 2012, commencing at page 24 [8 RT, 24]. The entire
14 argument concerned a motion to strike, not a jury instruction. The Court invited briefing on the
15 motion to strike, and my office prepared a brief and filed it the next morning, March 15, which
16 was also the day the jury was instructed and the closing arguments were given.

17 15. On the morning of March 15, the same morning on which the jury was instructed,
18 Plaintiff did not present or file a brief on the motion to strike Lt. Puglisi's testimony. Instead,
19 they proffered a new special jury instruction, no. 18. I objected to plaintiff's Special No. 18. The
20 Court seemed inclined to give an instruction on that subject and overruled my objection. I
21 attempted to mitigate the harm to my client from the surprise instruction. My efforts included
22 proposing to amend the two-sentence instruction to a one-sentence instruction that would avoid
23 linkage to the witness exclusion order, which I was concerned would raise the inference that the
24 Court was admonishing the jury that Lt. Puglisi had violated the witness exclusion order, which
25 he did not. The Court refused my attempt and gave the two-sentence instruction. Mr. Smith
26 argued the point of special instruction no. 18 during his closing, which in my view magnified the
27 effect of this unprecedented instruction.

28

1 16. Lt. Puglisi's testimony at trial was highly consistent with the interview he had
2 given to Gardiner in August of 2009, i.e., before either Janice Lowers or Mr. Taylor gave their
3 interviews to Gardiner and years before he read Taylor's and some of Lowers' trial testimony.
4 Lt. Puglisi and Mr. Taylor differed in their statements to Mr. Gardiner when each was
5 interviewed in 2009, and they differed on those same subjects when they testified at trial. Lt.
6 Puglisi testified at trial before Sgt. Misqueze testified. Misqueze testified that he was the author of
7 the IA Report 04-26-08-1, which was referred to at trial as Portos I. Misqueze and Puglisi both
8 testified that they were the pair of investigators into the alleged use of force by Omar Rodriguez
9 on witness Romero, and that each had discussion and meetings with Mr. Taylor during that
10 investigation. It was the alleged interference with the Misqueze-Puglisi IA that led Gardiner to
11 open his investigation #34 involving Mr. Taylor, the investigation that ultimately led to Plaintiff's
12 termination that was the central issue at the trial. Lt. Puglisi did not and could not have read the
13 trial testimony of Sgt. Misqueze, his co-investigator, because Misqueze testified after Puglisi at the
14 trial which was also on March 14, 2012.

15 Post-Trial Juror Comments and Investigation for Possible Juror Misconduct

16 17. On March 19, 2012, the jury returned a verdict of 9-3 in favor of Plaintiff. The
17 verdict was a surprise to me as I believed Plaintiff had failed to prove retaliatory animus was a
18 motivating cause for plaintiff's termination. Polling of the jurors revealed that the 3 defense
19 jurors were Jurors No. 8, No. 9, and No. 12. Once the jury was dismissed, I spoke to three jurors
20 who had stayed behind to speak to counsel, and I observed that Mr. Smith and Deputy Chief
21 Angel spoke to at least one other juror who left before I had the chance to speak to him.

22 18. The jurors I spoke to in the corridor post-trial including Juror No. 2, Juror No. 6,²
23 and Juror No. 8, who was the foreperson. Among other things, Juror No. 6 told me that he
24 discounted the testimony of Lt. Puglisi based on the law he was given concerning witness review
25 of trial transcripts and Lt. Puglisi's testimony that he had read some trial testimony. He also told
26

27 ² There also was a prospective juror no. 6 (a recent law school graduate who the Court chastised
28 for some of his disturbing statements in response to questions) who was excused for cause before
trial and the gentleman who began as prospective juror no. 13 became seated as trial juror no. 6.

1 me certain things about the discussion among the jurors on the burden of proof issue that were
2 contradicted by things Juror No. 8 later told me. Specifically, Juror No. 6 told me that Juror No.
3 8 advocated that the standard was "sole cause" rather than 'a cause', which Juror No. 8, a law
4 student, told me was not what she said in the jury room at all. Juror No. 8 stated instead that she
5 and other jurors discussed the exact wording of the Court's burden of proof instructions, not "sole
6 cause."

7 19. Juror No. 2 told me that he and other pro-plaintiff jurors expressed the opinion that
8 the City had failed to prove good cause for termination, and that the City's evidence of
9 obstruction was not sufficient for him to find that a 20+ year officer should be terminated. Juror
10 No. 2 also said that he and other jurors discussed their view that they had "not been given all the
11 evidence," which was among the reasons why the motives of the City in terminating the Plaintiff
12 were being questioned and debated during deliberations. I believe Mr. Smith heard these
13 comments of both Jurors No. 2 and 6, since Mr. Smith was standing close to me and Deputy
14 Chief Angel in the corridor at the time we were speaking to the jurors post-verdict.

15 20. Juror No. 9, who voted in favor of the defense, told me in a post-trial telephonic
16 interview that several of the jurors discussed the issue of Lt. Puglisi having been "prepped" with
17 testimony of other witnesses, which per the law they were given was seen by some jurors as a
18 violation of the witness exclusion order.

19 21. After the conclusion of the trial, I considered possible grounds for post-trial
20 motions. Among other steps I took was to request Carol Amberg, the Head Librarian at my law
21 firm, to conduct an online background search for publically available information concerning the
22 jurors and alternates. For example, I did not have phone numbers for any of the jurors so that I
23 could speak to them about their experiences and things I could improve on in future trials. I also
24 was interested in exploring the possibility that there had been misconduct by one or more jurors.
25 One of the potential grounds for misconduct was a prospective juror's failure to reveal a criminal
26 arrest or conviction, given the *voir dire* questions by the Court and by Ms. Savitt discussed above.
27 Ms. Amberg periodically reported to me on the progress of her efforts, and I gave her direction on
28 areas for permissible inquiry. I instructed her to refrain from having any verbal, electronic or

1 virtual contact with jurors, such as speaking the them on the phone, exchanging e-mails, or
2 seeking to "friend" a juror on Facebook.

3 22. I told Ms. Amberg information about the jurors that I learned through their voir
4 dire answers. For example, I told her that Juror No. 6 was a film maker and that Juror No. 7 was
5 a chef. Ms. Amberg conducted some Internet-based research which revealed a website for a
6 movie production business owned by an individual with the same name as Juror No. 6. Ms.
7 Amberg sent me the link to the website and I reviewed it. A man is depicted in still images and
8 moving images from an audio-video interview on the website. Based on my visual observations
9 and hearing his voice during *voir dire* and in the hallway post-trial, I recognized the person in
10 those images and the interview as the same one who was trial Juror No. 6. Ms. Amberg also sent
11 me a link to a Twitter account for a person who had the same name as Juror No. 7 and which
12 mentions that the person is or was a chef. Juror No. 7 mentioned in her *voir dire* answers on the
13 first day of trial that she was an executive chef. The Twitter page that I reviewed on the web
14 contained a still image of a woman, who based on my visual observations of her in the trial I
15 recognized as trial Juror No. 7.

16 23. Ultimately, Ms. Amberg reported to me that two jurors, who had voted in favor of
17 the Plaintiff and against the City, had public records of what I would consider negative contact
18 with police that they had not disclosed during *voir dire*. Those two jurors were trial Jurors No. 6
19 and 7. Neither trial Jurors No. 6 nor 7 revealed either the facts of their prior contacts with law
20 enforcement nor their respective self-assessments as to whether their prior contact would lead
21 them to favor or disfavor a particular side in the trial. From what I read, Juror No. 7's contacts
22 were very recent, all within just a few years of the trial and one was still pending as of the day the
23 trial began, i.e., the payment of a fine which was due on the March 5 date she was selected as a
24 trial juror.

25 24. I learned in speaking on the phone with Jurors No. 8 and 9 after the trial that a
26 secret ballot was taken by the jurors during deliberations on Friday, March 16 and that the
27 outcome of the secret ballot was a vote of 7-5. Both Jurors No. 8 and 9 also advised me that after
28 the weekend recess, two of the jurors changed their previous votes so the final verdict vote was 9-

1 3. One of the jurors who per Jurors No. 8 and 9 changed her vote over the weekend was trial
2 Juror No. 10. I left a phone message for her which, as I stated to every juror with whom I
3 attempted to call on the phone after the trial, specifically stated that she was under no obligation
4 to speak to me if she did not wish to. Juror No. 10 did return my call but advised me she did not
5 wish to discuss the case, and I respected her wishes and thus asked her no questions. Several
6 other jurors did not return messages I left for them.

7 25. I also discussed the case on the telephone post-verdict with Alternate Juror No.
8 14. He told me he was disappointed in the trial outcome, that he did not believe plaintiff was
9 terminated in retaliation for anything, and that based on the evidence at trial he would have voted
10 for the defense had he been allowed to deliberate and vote. When Trial Juror No. 5 was required
11 to be excused because of a job-related scheduling conflict at the end of the day on March 15,
12 Alternate Juror No. 13 became trial Juror No. 5 and Alternate Juror No. 14 became the one
13 remaining alternate.

14 26. At no time before or during trial, nor at any time before I asked Ms. Amberg to
15 begin her post-trial juror investigation efforts, did I know or have any reason to know or suspect
16 that trial Jurors No. 6 and 7 had criminal records. By failing to reveal their prior negative
17 contacts with law enforcement before the trial, trial Jurors No. 6 and 7 deprived the defense of the
18 ability to ask them follow-up questions regarding those contacts, to exercise possible challenges
19 for cause, or to exercise one of the remaining peremptory challenges Ms. Savitt and I had during
20 *voir dire*. The defense only exercised 2 peremptory challenges to the 12 seated jurors, plus
21 peremptories exercised to the alternate candidates.

22 27. In my view, there was no substantial evidence to prove that retaliatory animus was
23 a motivating cause for plaintiff's termination. Plaintiff's proof of retaliation pertained to the so-
24 called "demotion" claim, as the issues regarding plaintiff's purported conflicts with former Chief
25 Stehr in 2007 through May of 2009 all lacked the requisite proximity in time to the June 2010
26 termination by then-Chief Scott LaChasse. Stehr testified without dispute that he retired as of
27 December 2009 and had no role in LaChasse's consideration of Gardiner's report #34 or the
28 discipline LaChasse determined to be appropriate. LaChasse did testify that he had the assistance

1 of Tom Angel in the review and adjudication of the Gardiner investigation reports, and that Mike
2 Flad had no role or input in the review or adjudication of those reports. Three witnesses testified
3 without contradiction that City Manager Mike Flad was "walled off" from the disciplinary
4 decisions following Gardiner's investigation reports: Mr. Flad himself, Chief LaChasse, and
5 Deputy Chief Angel. In my opinion, there was no factual basis for a reasonable juror to find that
6 plaintiff's termination was motivated by any retaliatory animus. This was one of several reasons
7 why the verdict in favor of the plaintiff surprised me.

8 28. The jury's economic damages figure was predicated on the figures presented by
9 Plaintiff's damages expert, Karen Smith. The jury's award of economic damages was the same as
10 the figure Ms. Smith presented under her first scenario: that Plaintiff's loss of pay and benefits
11 was for the position of Captain, not Deputy Chief or Chief. This shows the jury did not agree
12 with the retaliatory "demotion" claim, because the jury did not award Plaintiff for the differential
13 above base Captain's pay for the Deputy Chief assignment. Smith presented three damages
14 scenarios: (1) one for Captain title, pay and benefit through his anticipated retirement date, (2)
15 one of which assumed that Plaintiff had a pay and benefits loss for a Deputy Chief title, and (3)
16 one which assumed he would have become Chief of Police. By rejecting the Deputy Chief
17 damages scenario, the implicit jury finding is that they rejected the wrongful demotion theory and
18 awarded only the amount predicated on Plaintiff having been properly reassigned to the Captain
19 title rather than having been wrongfully demoted. This analysis was supported by my post-
20 verdict interviews with several jurors, including Jurors No. 9 and 12 who told me that most of the
21 jurors stated during deliberations that then Chief Stehr was within his rights to reassign personnel
22 and duties within the Department in light of the series of events befalling the Department at the
23 time.

24 29. Attached hereto as Exhibit 8 are the following excerpts of trial testimony of James
25 Gardiner from March 7, 2012 (the third day of trial) ["3 RT"] and March 8, 2012 (the fourth day
26 of trial) ["4 RT"] which evidence the foundation for his investigation no. 34: 3 RT 175:4-15; 3
27 RT 187:9-188:6; 3 RT 188:19-27; 4 RT 8:5-9:8; 4 RT 10:1-11:7; 4 RT 14:22-15:9; 4 RT 37:10-
28 14; 4 RT 39:23-41:2; 4 RT 54:4-12; 4 RT 61:2-13; 4 RT 63:25-64:17; 4 RT 69:17-70:2; 4 RT

96:19-99:25; 4 RT 101:4-102:12; 4 RT 102:18-106:5; 4 RT 107:4-14; 4 RT 108:13-109:9; 4 RT 111:21-113:24; 4 RT 114:26-115:17; 4 RT 118:15-119:1; 4 RT 123:5-19; 4 RT 126:14-128:11; 4 RT 129:7-131:21; 4 RT 132:12-133:27; 4 RT 143:1-145:12; 4 RT 145:13-146:9; 4 RT 147:7-148:8; 4 RT 151:13-153:27; 4 RT 154:8-155:5.

30. Attached hereto as Exhibit 9 are the following excerpts of trial testimony of former Chief Timothy Stehr from March 6, 2012 (the second day of trial) ["2 RT"] and March 7, 2012 (the third day of trial) ["3 RT"] which evidence additional foundation for Mr. Gardiner's investigation no. 34: 2 RT 177:22-24; 3 RT 11:6-23; 3 RT 24:25-25:25; 3 RT 26:3-28:14; 3 RT 170:3-171:12.

31. Attached hereto as Exhibit 10 are the following excerpts of trial testimony of former Captain Janice Lowers from March 12, 2012 (the sixth day of trial) ["6 RT"] which evidence additional foundation for Mr. Gardiner's investigation no. 34: 6 RT 93:19-21; 6 RT 94:10-95:12; 6 RT 96:20-97:7; 6 RT 97:22-98:2; 6 RT 98:27-101:2; 6 RT 102:4-14; 6 RT 104:1-23.

32. Attached hereto as Exhibit 11 are the following excerpts of trial testimony of former Deputy Chief William Taylor from March 8, 2012 (the fourth day of trial) ["4 RT"] and March 12, 2012 (the sixth day of trial) ["6 RT"] which evidence additional foundation for Mr. Gardiner's investigation no. 34: 4 RT 177:7-9; 4 RT 178:16-19; 4 RT 180:9-12; 4 RT 181:5-25; 4 RT 184:15-22; 4 RT 187:4-14; 4 RT 187:15-188:5; 4 RT 188:17-189:3; 4 RT 191:27-192:24; 4 RT 192:28-193:2; 6 RT 76:7-9; 6 RT 190:15-20; 6 RT 192:20-195:28.

33. Attached hereto as Exhibit 12 are the following excerpts of trial testimony of Lieutenant J.J. Puglisi from March 14, 2012 (the eighth day of trial) ["8 RT"] which evidence additional foundation for Mr. Gardiner's investigation no. 34: 8 RT 7:1-8; 8 RT 7:14-28; 8 RT 8:22-9:18; 8 RT 9:24-10:4; 8 RT 11:1-12:22; 8 RT 13:3-26; 8 RT 15:28-16:16; 8 RT 16:25-17:11; 8 RT 19:18-20:5; 8 RT 34:28-37:3; 8 RT 56:17-57:6; 8 RT 59:19-60:14; 8 RT 62:17-65:22; 8 RT 69:7-71:8

34. Attached hereto as Exhibit 13 are the following excerpts of trial testimony of Sergeant Gerry Misque from March 14, 2012 (the eighth day of trial) ["8 RT"] which evidence

additional foundation for Mr. Gardiner's investigation no. 34: 8 RT 77:11-79:17; 8 RT 79:23-82:16; 8 RT 84:11-86:16; 8 RT 88:5-17; 8 RT 89:3-90:6; 8 RT 90:18-26; 8 RT 91:3-92:26; 8 RT 93:15-27; 8 RT 111:10-114:22; 8 RT 114:23-115:19.

35. Attached hereto as Exhibit 14 are the following excerpts of trial testimony of former Captain Craig Varner from March 14, 2012 (the eighth day of trial) ["8 RT"] which evidence the Burbank Police Department's reliance on the findings of Mr. Gardiner's investigation no. 34: 8 RT 142:15-144:14; 8 RT 144:18-145:11; 8 RT 146:25-148:15; 8 RT 151:19-28.

36. Attached hereto as Exhibit 15 are the following excerpts of trial testimony of Deputy Chief Tom Angel from March 14, 2012 (the eighth day of trial) ["8 RT"] which evidence the Burbank Police Department's reliance on the findings of Mr. Gardiner's investigation no. 34: 8 RT 163:28-165:13; 8 RT 165:25-167:22; 8 RT 168:17-170:22; 8 RT 172:23-173:6; 8 RT 183:1-26; 8 RT 185:25-186:23.

37. Attached hereto as Exhibit 16 are the following excerpts of trial testimony of Chief Scott LaChasse from March 9, 2012 (the fifth day of trial) ["5 RT"] which evidence the Burbank Police Department's reliance on the findings of Mr. Gardiner's investigation no. 34: 5 RT 96:10-97:15; 5 RT 101:11-104:10; 5 RT 105:10-108:10; 5 RT 108:11-109:6; 5 RT 110:13-111:8; 5 RT 119:20-120:16; 5 RT 122:28-124:3; 5 RT 128:7-131:25

38. Attached hereto as Exhibit 20 are true and correct copies of the cover page and pages 24 and 47 of the Reporter's Transcript from the eighth day of trial, March 14, 2012 ("8 RT"), and pages 1, 3-9, 155-156, and 159 from the ninth day of trial, March 15, 2012 ("9 RT"), which pertain to CACI 2405 and Plaintiff's Special Instruction No. 18.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 7, 2012, at Los Angeles, California.



RONALD F. FRANK